STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP. Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a Ameritech Illinois	)	Docket No. 12-0550

SprintCom, Inc., WirelessCo, L.P. through their agent Sprint Spectrum L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.

Supplemental Written Statement of
Randy G. Farrar
Filed February 12, 2013

Exhibit RGF-6.1

The FCC's MAP Mobile Decision

Before the
Federal Communications Commission
Washington, D.C. 20554

MAP Mobile Communications, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	**File No. EB-05-MD-013**
Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., Pacific Bell Telephone Company, and Southwestern Bell Telephone, L.P.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 13, 2009 **Released: May 13, 2009**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant in part and otherwise dismiss or deny the claims alleged in the formal complaint[1] that MAP Mobile Communications, Inc. ("MAP") filed against Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc. (collectively, the "Midwest ILECs"), and against Pacific Bell Telephone Company ("PacBell") and Southwestern Bell Telephone, L.P. ("SWBT") under section 208 of the Communications Act of 1934, as amended ("Act").[2] In short, the Complaint alleges that Defendants violated sections 201(b), 251(b)(5), and 415 of the Act,[3] and sections 20.11, 51.703, and 64.2401 of the Commission's rules,[4] by (a) unlawfully charging MAP for

[1] Complaint, File No. EB-05-MD-013 (filed July 12, 2005) ("Complaint").

[2] 47 U.S.C. § 208. MAP initially named SBC Communications, Inc. ("SBC"), Ameritech Corporation ("Ameritech"), and Pacific Bell Communications as defendants. Complaint at 1. In their Answer, Defendants argued that MAP incorrectly identified those entities as defendants. Defendants' Answer, File No. EB-05-MD-013 (filed Aug. 11, 2005) ("Answer") at 3, ¶ 2. The parties subsequently stipulated that the real parties in interest are the Midwest ILECs, PacBell, and SWBT. Supplemental Joint Statement of Complainant and Defendants, File No. EB-05-MD-013 (filed Nov. 2, 2005) ("Supplemental Joint Statement") at 10, ¶ 28. We have modified the caption in this case accordingly, and hereby dismiss SBC, Ameritech, and Pacific Bell Communications as parties, without prejudice.

[3] 47 U.S.C. §§ 201(b), 251(b)(5), and 415.

[4] 47 C.F.R. §§ 20.11, 51.703, and 64.2401.

(i) transport and termination of Defendant-originated traffic and (ii) services that MAP cancelled or never requested; (b) failing to pay MAP for terminating local traffic; (c) providing unclear and confusing bills; and (d) demanding payment of charges that were more than two years old.[5] MAP bifurcated its claims for damages pursuant to the Commission's rules,[6] and thus this Order addresses MAP's liability claims only.[7]

2. As explained below, we dismiss without prejudice those portions of the Complaint that relate to PacBell, because MAP's interconnection agreement with PacBell requires MAP to resolve its claims against PacBell in a proceeding before the California Public Utilities Commission ("California PUC"). Moreover, we grant MAP's claims alleging that the Midwest ILECs and SWBT violated section 201(b) of the Act and section 51.703(b) of the Commission's rules by charging MAP for the transport and termination of certain intraMTA traffic that originated on their networks. Because our ruling under section 201(b) of the Act and section 51.703 of the Commission rules will afford MAP all the relief to which it is entitled for the unlawful transport and termination charges, we find it unnecessary to address counts in the Complaint alleging that these charges also violated section 251(b)(5) of the Act, and we dismiss those counts without prejudice. We deny MAP's other claims.

II. BACKGROUND

3. MAP is a Commercial Mobile Radio Service ("CMRS") carrier that provided one-way paging services in California and several Midwestern states from the mid-1990s until 2004.[8] SWBT, PacBell, and the Midwest ILECs are all incumbent local exchange carriers ("incumbent LECs") under the Act.[9]

4. To provide its paging services, MAP interconnected its network with the public switched telephone network in Defendants' service areas via interconnection facilities MAP ordered from Defendants.[10] In 1998, MAP and PacBell entered into an interconnection agreement pursuant to section 252(i) of the Act.[11] MAP never executed an interconnection agreement with either SWBT or the Midwest ILECs, however.[12] Instead, beginning in the mid-1990s, MAP ordered various interconnection facilities from SWBT's and the Midwest ILECs' tariffs, and SWBT and the Midwest ILECs billed MAP for these

[5] *See, e.g.,* Complaint at 8-21, ¶¶ 15, 16, 19-32, 36-44; 24-26, ¶¶ 51, 54, 56, 57; 28-31, ¶¶ 61-66, 69-71. MAP listed two counts in its Complaint as Count XVIII alleging separate violations of sections 64.2401(b) and 64.2401(d) of the Commission's rules. The parties have stipulated to the dismissal of Counts I, II, III, XIV, XVIII (§ 64.2401(d)) and XXI of the Complaint. *See* Second Supplemental Joint Status Report of Complainant and Defendants, File No. EB-05-MD-013 (filed Jan. 23, 2006) ("Second Supplemental Joint Status Report") at 2-3, ¶ 2; 5, ¶ 9. *See also* Supplemental Joint Statement at 8, ¶ 25. Thus, we hereby dismiss those counts without prejudice.

[6] *See* 47 C.F.R. § 1.722(d). MAP erroneously cited to rule 1.722(h) in its Complaint. Complaint at 7-8, ¶ 14.

[7] *See* 47 C.F.R. § 1.722(e).

[8] *See, e.g.,* Complaint at 1-2, ¶ 1; Joint Statement of Complainant and Defendants, File No. EB-05-MD-013 (filed Sept. 16, 2005) ("Joint Statement") at 4, ¶ 12; MAP Mobile Communications, Inc. Responsive Brief on Selected Issues, File No. EB-05-MD-013 (filed Mar. 8, 2006) ("MAP Reply Brief") at 21, ¶ 54, n.80 ("MAP quit providing paging services approximately a month after [August 21, 2004]").

[9] 47 U.S.C. § 251(h). *See, e.g.,* Complaint at 2, ¶ 2; Answer at 3, ¶ 2.

[10] *See, e.g.,* Complaint at 2, ¶ 2, MAP Mobile Communications, Inc. Proposed Findings of Fact and Conclusions of Law and Legal Analysis, File No. EB-05-MD-013 (filed July 12, 2005) at 2, ¶ 2.

[11] 47 U.S.C. § 252(i). *See, e.g.,* Joint Statement at 4, ¶ 14; Complaint at 15-16, ¶ 28; Answer at 15, ¶ 28; Complaint Exhibit 22, Conformed Paging Interconnection Agreement between Pacific Bell and MAP Mobile Communications, Inc. ("Complaint Exhibit 22, Interconnection Agreement" or "Interconnection Agreement").

[12] *See, e.g.,* Complaint at 15-16, ¶ 28; Joint Statement at 5, ¶ 18.

facilities in accordance with the tariffs' terms.[13]

III. DISCUSSION

A. The Claims Against PacBell Are Dismissed Without Prejudice.

5. The Interconnection Agreement directs MAP and PacBell to use certain California PUC dispute resolution procedures to resolve any disputes arising under the Agreement.[14] Defendants ask that we dismiss all claims relating to PacBell in deference to that provision.[15] MAP responds that (1) the Interconnection Agreement is no longer in effect; (2) the Agreement's dispute resolution provision is not mandatory; and (3) even if the dispute resolution provision does apply, the Commission should nevertheless adjudicate the Complaint.[16]

6. For the reasons below, we find that the Interconnection Agreement remains in force, that it requires the parties to follow the California PUC's dispute resolution process to resolve the present dispute, and that MAP has provided no justification for overriding the parties' agreement to follow that process. We therefore dismiss without prejudice those portions of the Complaint that assert claims against PacBell. MAP may pursue resolution of those claims by following the California dispute resolution procedures referenced in the parties' Interconnection Agreement.

1. The Interconnection Agreement Between MAP and PacBell Still Governs.

7. The initial term of the Interconnection Agreement ended on June 20, 1999.[17] The Agreement provides that, after that date, "the Agreement shall continue in force and effect unless and until *terminated* as provided herein."[18] The relevant termination option states:

> [E]ither Party may terminate this Agreement by providing written notice of termination to the other Party, such written notice to be provided at least sixty (60) days in advance of the date of termination. Upon delivery of a notice of termination as set forth above, the Parties shall within thirty (30) days commence negotiations in good faith to reach a new interconnection agreement. At least one-hundred and twenty (120) days prior to the expiration of this Agreement, the parties shall enter into negotiations to reach a new interconnection agreement. In the event of

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[13] *See, e.g.,* Answer at 12, ¶ 20; 13, ¶ 22; 14, ¶ 25; Answer, Exhibit 3, Defendants' Proposed Findings of Facts, Conclusions of Law and Legal Analysis ("Defendants' Legal Analysis") at 17-18; Defendants' Initial Brief, File No. EB-05-MD-013 (filed Feb. 22, 2006) ("AT&T Initial Brief") at 24; AT&T's Reply Brief, File No. EB-05-MD-013 (filed Mar. 8, 2006) ("AT&T Reply Brief") at 33. Although MAP never specifically alleges that it ordered its interconnection facilities and services from SWBT's and the Midwest ILECs' tariffs, it generally acknowledges that these services were provided pursuant to SWBT's and the Midwest ILECs' tariffs. *See, e.g.,* Reply at 23, ¶ 49 (referencing SWBT's and the Midwest ILECs' tariffs); MAP Mobile Communications, Inc. Initial Brief on Selected Issues, File No. EB-05-MD-013 (filed Feb. 22, 2006) ("MAP Initial Brief") at 18-19, ¶¶ 50-53 (arguing that SWBT's and the Midwest ILECs' tariffs do not contain certain rates); MAP Reply Brief at 17-18, ¶ 46 (referencing SWBT's and the Midwest ILECs' tariffs).

[14] *See* Complaint Exhibit 22, Interconnection Agreement at 28, § 28.

[15] Defendants' Motion to Dismiss, File No. EB-05-MD-013 (filed Aug. 11, 2005) ("Defendants' Motion to Dismiss") at 2-9.

[16] *See* MAP Mobile Communications, Inc. Opposition to Defendants' Motion to Dismiss, File No. EB-05-MD-013 (filed Sept. 1, 2005) ("MAP Opposition to Motion to Dismiss) at 2-10, ¶¶ 1-20.

[17] *See, e.g.,* Joint Statement at 4, ¶ 14.

[18] Complaint Exhibit 22, Interconnection Agreement at 21, § 14.1 (emphasis added).

> such negotiations, this Agreement shall continue in effect until a new interconnection agreement becomes effective.[19]

8. On August 27, 1999, SWBT, on behalf of PacBell, sent MAP a letter stating that:

> The initial term of the interconnection agreement between Map Mobile Communications, Inc. and Pacific Bell ended June 20, 1999. Pursuant to Section 14.1 of the Agreement, Pacific Bell, by this letter, is providing Map Mobile Communications, Inc. written notice of termination at least 60 days in advance of the actual date of termination. As required by the Agreement, Pacific Bell is ready to begin negotiations, within 30 days of your receipt of this notice, for a new interconnection agreement. … *The current agreement will remain in effect until replaced by a new agreement*.[20]

9. Apparently, no negotiations for a new interconnection agreement ever took place,[21] although neither party explains why. Thus, the original Interconnection Agreement was never replaced by a new one.

10. The parties have opposite views of the effect of the August 27, 1999 Letter. MAP argues that the August 27, 1999 Letter set the date for termination of the agreement 60 days later, *i.e.,* October 26, 1999.[22] MAP thus contends that the Agreement terminated on October 26, 1999 and, because the parties never negotiated a successor agreement, their interconnection relationship was no longer governed by contract after that date.[23] Defendants, however, characterize the August 27, 1999 Letter as indicating merely PacBell's intention to terminate the original agreement upon the successful negotiation of a new one.[24] Defendants argue that, because no successor agreement was negotiated, the Interconnection Agreement was never terminated and remains in effect today.

11. We find that the record supports Defendants' view. MAP's assertion that the Interconnection Agreement terminated 60 days after the August 27, 1999 Letter conflicts with the language of both the Letter and the Agreement. According to MAP, the Interconnection Agreement does not require the parties to specify an actual date of termination because, "once a party to the [Interconnection Agreement] provides the other party with a written notice of termination, the 60-day termination period is activated."[25] The Agreement, however, says that written notice must be given "*at least* 60 days in advance" of termination, not that termination will automatically occur on the 60th day after notice is given.[26] In other words, the Agreement's 60-day notice period is a minimum, not a maximum. Thus, the Agreement did not, by its own terms, terminate on October 26, 1999. Similarly, consistent with the Agreement's notice requirement, the August 27, 1999 Letter stated that PacBell was giving "written notice of termination *at least* 60 days in advance of the actual date of termination," thus

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[19] Complaint Exhibit 22, Interconnection Agreement at 21, § 14.1.

[20] Complaint Exhibit 23, Letter dated August 27, 1999 from David Adams, Southwestern Bell Area Manager, Wireless Negotiations, to Gary Morrison, President, MAP Mobile Communications, Inc. ("August 27, 1999 Letter" or "Letter") (emphasis added).

[21] *See* Complaint at 15-16, ¶ 28; Defendants' Motion to Dismiss at 3; Joint Statement at 5, ¶ 16.

[22] Complaint at 15-16, ¶ 28; MAP Initial Brief at 2, ¶¶ 2-3; MAP Opposition to Motion to Dismiss at 4, ¶ 6.

[23] *See, e.g.,* MAP Initial Brief at 2-3, ¶¶ 2-4; MAP Opposition to Motion to Dismiss at 4, ¶ 6.

[24] Defendants' Motion to Dismiss at 3.

[25] MAP Opposition to Motion to Dismiss at 3-4, ¶ 6.

[26] Complaint Exhibit 22, Interconnection Agreement at 21, § 14.1 (emphasis added).

making clear that any termination would occur not sooner than 60 days, and could occur much later than 60 days after the Letter.[27] Moreover, as permitted by the Agreement, the Letter also states that "[t]he current agreement will remain in effect until replaced by a new agreement."[28] Consequently, the Letter plainly expresses the permissible intent to terminate not in 60 days, but only after the negotiation of a new agreement.

12. MAP also argues that the Agreement establishes a "condition precedent" requiring the parties to negotiate for a new agreement in order for the original one to remain in place after the August 27, 1999 Letter.[29] This argument rests on language in a portion of Section 14.1 of the Interconnection Agreement stating that "[i]n the event of such negotiations, this Agreement shall continue in effect until a new interconnection agreement becomes effective."[30] Because there were no negotiations, MAP reasons, the Agreement terminated 60 days after the August 27, 1999 Letter.[31] We disagree. MAP's "condition precedent" argument presumes, erroneously, that the parties intended to terminate the old agreement in the event negotiations for a new agreement did not occur within 60 days. That presumption is flatly contradicted by language in Section 14.1 stating without qualification that "the Agreement shall continue in force and effect unless and until terminated as provided herein."[32] Because the August 27, 1999 Letter did not terminate the Agreement, the parties' failure to negotiate a new agreement did not end their contractual relationship; rather, the parties remained bound by the original Agreement.

13. In addition, MAP's conduct subsequent to the August 27, 1999 Letter confirms that it understood the Agreement to remain in effect. Until it ceased paging operations in 2004, MAP continued to bill PacBell for reciprocal compensation under the terms of the Agreement, issuing numerous invoices with the express title: "Billing under Paging Interconnection Agreement dated April 16, 1999."[33] In addition, in April 2001, a senior MAP executive sent PacBell a letter in which he affirmed that "[w]e currently have an interconnection agreement with Pacific Bell that covers our activities in California … ."[34] Thus, until it filed this Complaint, MAP, too, apparently believed it still had an interconnection agreement with PacBell. This evidence provides further support for our conclusion that the Agreement did not terminate in 1999, as MAP now contends.[35] Accordingly, we hold that the Interconnection Agreement, including its dispute resolution provision, remained effective throughout the relevant

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[27] Complaint Exhibit 23, August 27, 1999 Letter.

[28] *Id.*

[29] *See, e.g.,* MAP Initial Brief at 2-4, ¶¶ 4-7; MAP Opposition to Motion to Dismiss at 5, ¶ 7.

[30] Complaint Exhibit 22, Interconnection Agreement at 21, § 14.1.

[31] MAP Opposition to Motion to Dismiss at 4, ¶ 6.

[32] Complaint Exhibit 22, Interconnection Agreement at 21, § 14.1.

[33] Defendants' Supplemental Response, File No. EB-05-MD-013 (filed Aug. 25, 2005) ("Defendants' Supplemental Response") at Exhibit G. Exhibit G contains invoices issued as late as October 2004. The invoices' reference to "Interconnection Agreement dated April 16, 1999" apparently relates to the date on which MAP signed the Interconnection Agreement. *See* Complaint Exhibit 22, Interconnection Agreement at 30.

[34] AT&T Initial Brief at 11 (*citing* April 20, 2001 Letter from David V. Sherwood, Chief Financial Officer, MAP to Willena Slocum, Director of Negotiation Support, SBC, included as Exhibit B to Attachment 2 of Letter from Anisa A. Latiff, Associate Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, File No. EB-05-MD-013 (filed Jan. 25, 2006)).

[35] *See, e.g., Julius Goldman's Egg City v. U.S.*, 697 F.2d 1051, 1058 (Fed. Cir. 1983) (stating that the "contract must be interpreted in accordance with the parties' understanding as shown by their conduct before the controversy"), *cert. denied* 464 U.S. 814 (1983); *Cedars-Sinai Medical Center v. Shewry*, 137 Cal.App.4th 964, 983, 41 Cal.Rptr.3d 48, 62 (2006) ("A party's conduct subsequent to the formation of a contract may be looked upon to determine the meaning of disputed contractual terms"); *Oceanside 84, Ltd. v. Fidelity Federal Bank*, 56 Cal.App.4th 1441, 1449, 66 Cal.Rptr.2d 487 (1997) (stating that "[t]he conduct of the parties after the execution of the contract, and before any controversy arose, may be considered in order to attempt to ascertain the parties' intention").

period.[36]

2. The Interconnection Agreement Requires the Parties to Use the California PUC's Dispute Resolution Procedures.

14. Defendants argue that we should dismiss MAP's claims against PacBell, because Section 28 of the Interconnection Agreement prohibits MAP from bringing those claims to this Commission.[37] For the following reasons, we agree.

15. Section 28 of the Interconnection Agreement provides:

> [I]n the event of *any* dispute arising under this Agreement … the Parties shall first meet and confer to discuss in good faith the Dispute and seek resolution prior to taking any action before any court or regulatory authority, or before making any public statement about or disclosing the nature of the Dispute to any third party. … Thereafter, the Parties *shall* comply with the dispute resolution procedures set forth in pages 36-39 of [California Public Utilities] Commission Decision 95-12-056."[38]

The plain meaning of the foregoing provision is that, in the event of *any* dispute arising under the Agreement, the parties *shall* comply with the California PUC's dispute resolution procedures.[39] This language makes clear that the parties chose the California procedures as their exclusive remedy, precluding any remedy here.

16. MAP argues, however, that section 28 does not constitute a mandatory forum selection clause, but rather is "vague and permissive," allowing but not requiring use of the California procedures.[40] According to MAP, because Section 28 refers to meeting to seek resolution prior to "taking action before *any* court or regulatory authority," it cannot mean that the California PUC is the exclusive forum for resolving disputes.[41] We disagree. The reference to "any court or regulatory authority" does not conflict with the directive that the parties "shall comply" with California dispute resolution procedures. For instance, in following the California procedures, a party could ultimately pursue action before a regulatory authority (a complaint before the PUC) or a court (appeal of the PUC's ruling).[42]

17. We also reject MAP's sweeping assertion, based on a single case, that "[f]ederal courts have held that contract language pertaining to compliance with dispute resolution procedures is

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[36] According to the Complaint, PacBell's unlawful charges to MAP began in 1998 — before the October 26, 1999 date when MAP contends the Interconnection Agreement terminated. Complaint at 7-8, ¶ 14. Thus, even if the Interconnection Agreement, which the parties entered in 1998, later terminated in October 1999, we would still find that, under the Agreement's forum selection clause, MAP's claims against PacBell should be resolved before the California PUC, to the extent they arose before October 1999. *See infra* at Section III A (2)-(3).

[37] Defendants' Motion to Dismiss at 2-9.

[38] Interconnection Agreement at 28, § 28 (emphasis added), referring to *Competition for Local Exchange Service, Decision 95-12-056,* 63 CPUC 2d 700, 1995 WL 767891 (1995). The referenced California PUC decision establishes an escalating process of negotiation, mediation, decision by an Administrative Law Judge, and ultimately a complaint before the PUC, if necessary.

[39] Complaint Exhibit 22, Interconnection Agreement at 28, ¶ 28.

[40] MAP Initial Brief at 10-11, ¶¶ 28-31; MAP Reply Brief at 9-11, ¶¶ 23-27.

[41] MAP Initial Brief at 10-11, ¶¶ 28-31; MAP Reply Brief at 9-11, ¶¶ 23-27.

[42] *See* Cal. Pub. Util. Code § 1756 (providing that an aggrieved party may petition for court review of any commission order or decision).

permissive, and does not confer exclusive jurisdiction upon any forum."[43] The case MAP cites merely indicates that one must examine the specific language of a dispute resolution provision in order to determine whether it is mandatory or permissive.[44] In this case, the Interconnection Agreement clearly identifies the California PUC procedures as the exclusive remedy – "in the event of *any* dispute … the Parties *shall* comply with the dispute resolution procedures … ."[45] Consequently, the Interconnection Agreement requires the parties to proceed before the California PUC rather than here.[46]

3. The Interconnection Agreement's Dispute Resolution Procedures Should Be Enforced.

18. MAP argues that the Commission should rule on its claims against PacBell, notwithstanding any agreement to follow California's dispute resolution process.[47] In support of this argument, MAP cites the Enforcement Bureau's order in *Broadview Networks, Inc. v. Verizon Tel. Cos*.[48] There, the Bureau concluded, correctly, that an agency should honor dispute resolution agreements including valid forum-selection clauses, absent a compelling reason not to do so.[49] The Bureau noted that such compelling circumstances may exist when (1) the complaint concerns a dispute that lies at the core of an agency's enforcement mission; (2) the dispute "inevitably touches commercial relationships" among many participants in the relevant industry; (3) the dispute involves interpretation of facially clear contract language (as opposed to the interpretation of ambiguous contract language or the application of contract language to particular facts); or (4) the alternative dispute resolution process would be a waste of time.[50] Applying these criteria, the Bureau decided to defer a decision on the *Broadview* complaint pending a commercial arbitration proceeding.[51]

19. Citing the first, second, and fourth *Broadview* criteria, MAP argues that there are compelling reasons to set aside the dispute resolution terms in its Agreement with PacBell.[52] For the following reasons, we disagree.

20. Regarding the first *Broadview* criterion, resolution of MAP's claims against PacBell does not lie at the core of the agency's enforcement mission.[53] MAP essentially argues that, simply because it alleges a violation of the Act and Commission rules, the dispute lies at the core of our mission.[54] We disagree. Here, MAP's claims against PacBell can be resolved largely, if not entirely, by interpreting and enforcing the parties' Agreement, a task that falls squarely within the coordinate expertise of the forum

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[43] MAP Reply Brief at 10, ¶ 26 (*citing Northern California District Counsel of Laborers v. Pittsburg-Des Moines Steel Co.,* 69 F.3d 1034, 1037 (9th Cir. 1995)).

[44] *Northern California District Counsel*, 69 F.3d at 1036-37.

[45] Complaint Exhibit 22, Interconnection Agreement at 28, ¶ 28 (emphasis added).

[46] *See generally Maggio v. Windward Capital Management Co.*, 96 Cal. Rptr2d 168 (Cal. App. 2000) (finding that agreement to follow American Arbitration Association ("AAA") procedures required the parties to proceed before the AAA).

[47] MAP Opposition to Motion to Dismiss at 7-10, ¶¶ 12-20.

[48] *Broadview Networks, Inc. v. Verizon Tel. Cos*, Memorandum Opinion and Order, 19 FCC Rcd 22216 (Enf. Bur. 2004).

[49] *Id.* at 22222-23, ¶ 18.

[50] *Id.*

[51] *Id.* at 22223-26, ¶¶ 19-26.

[52] MAP does not argue that the third *Broadview* criterion applies here.

[53] *Broadview Networks v. Verizon*, 19 FCC Rcd at 22222-24, ¶¶ 18-20.

[54] MAP Opposition to Motion to Dismiss at 8, ¶ 15.

chosen by the parties – the California PUC.[55] To the extent that federal interconnection law is implicated, construing such law in the context of a particular dispute also falls squarely within the California PUC's expertise.[56] Consequently, resolving this dispute regarding the proper interpretation of the parties' Interconnection Agreement does not lie at the core of the Commission's mission.

21. Regarding the second *Broadview* criterion, a decision here would not inevitably affect many industry participants.[57] As in *Broadview*, this dispute between two parties about the meaning of their interconnection agreement will have no direct and immediate impact on third parties, beyond the usual precedential effect of any Commission decision. That is not enough to override the interest in enforcing the parties' choice of forum.

22. Turning to the fourth *Broadview* criterion,[58] we reject MAP's assertion that it would be "a waste of everyone's time and energy" to submit its claims against PacBell to the California procedures, because the Commission would have to decide similar issues regarding the other defendants.[59] No other portion of this case will be resolved by reference to the terms of the parties' Interconnection Agreement in California, and thus it would not be wasteful for the parties to follow the agreed-upon procedures for enforcing that Agreement.

23. Neither are we persuaded to override the parties' choice of forum because the California PUC dismissed without prejudice a complaint that PacBell filed against MAP four months after MAP initiated this proceeding.[60] The California PUC found that PacBell's complaint raised many of the same issues presented in this proceeding, and thus concluded that prosecuting simultaneous actions would be inefficient and would risk inconsistent results.[61] The California PUC reached that conclusion, however, without addressing the parties' forum selection clause. Moreover, nothing in the California PUC's decision suggests that it lacks authority to resolve the issues between the parties; in fact, the PUC noted that if the Commission did not resolve the issues raised in PacBell's complaint, then PacBell could petition the PUC to reopen the case with no adverse consequences.[62] Thus, the California PUC decision provides no basis to disregard the parties' agreement to resolve disputes at the PUC.

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24. In sum, we find that (i) MAP and PacBell agreed to follow only the California dispute resolution procedures cited in the Interconnection Agreement; (ii) the Agreement remains in effect; and (iii) no compelling reason exists to override the parties' Agreement. Accordingly, we dismiss without prejudice Counts X, XI, XII, and XXIV of the Complaint.[63]

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[55] *See, e.g.,* 47 U.S.C. § 252.

[56] *Id.*

[57] *Broadview Networks v. Verizon*, 19 FCC Rcd at 22222, 22224, ¶¶ 18, 21.

[58] *Id.* at 22222, 22225, ¶¶ 18, 23.

[59] MAP Opposition to Motion to Dismiss at 10, ¶ 19.

[60] *Pacific Bell Telephone Company v. MAP Mobile Communications, Inc.*, Case 05-11-016, Decision Granting Motion to Dismiss, 2006 WL 1059026, (Cal. P.U.C. April 13, 2006).

[61] *Id.*

[62] *Id.* In addition, as previously explained, any overlap of issues in this case and in the California PUC proceeding may be more apparent than real, because only the California PUC proceeding involves interpretation of the Interconnection Agreement.

[63] *See* Complaint at 20-21, ¶¶ 42-44; 31, ¶ 71. MAP argues that we should dismiss the Defendants' Motion to Dismiss because the Motion does not comply with certain procedural rules. MAP Opposition to Motion to Dismiss at 2, ¶¶ 1-2. Specifically, MAP asserts that the Motion fails to include proposed findings of fact and conclusions of

(continued …)

B. SWBT and the Midwest ILECs May Not Charge MAP for Facilities and Services Used for IntraMTA Traffic that Originated on Their Networks, but May Charge for Facilities and Services Used for Transiting Traffic.

25. MAP alleges that, since approximately February 1997,[64] SWBT and the Midwest ILECs have violated sections 201(b) and 251(b)(5) of the Act,[65] and section 51.703(b) of the Commission's rules[66] (especially as construed by *TSR Wireless v. US West*),[67] by billing MAP for facilities and services related to "intraMTA" traffic originated on SWBT's and the Midwest ILECs' networks.[68] In response, SWBT and the Midwest ILECs argue that the Commission has not expressly prohibited carriers from charging for any costs incurred for transporting traffic to paging carriers' networks.[69] In their view, section 51.703(b), as interpreted by *TSR Wireless v. US West*, "only prohibits LECs from charging paging carriers for facilities used to deliver 'LEC-originated, intraMTA traffic *to the paging carrier's point of interconnection*'"[70] and, conversely, provides that paging carriers are "responsible for charges for facilities ordered from the LEC to connect points on the paging carrier's side of the point of interconnection."[71] They argue that "[t]he facilities that MAP ordered to connect its network to SWBT's and the Midwest ILECs' networks lie on *MAP's* side of such points of interconnection" and that these facilities are therefore not subject to the prohibition against origination charges.[72]

26. In support of their view that the interconnection facilities lie on MAP's side of its point of interconnection ("POI") with the Defendants, and thus outside the scope of the section 51.703(b) prohibition, SWBT and the Midwest ILECs cite section 251(c)(2) of the Act, which requires incumbent LECs to provide interconnection "at any technically feasible point within the [incumbent LEC's]

(Continued from previous page)
law, as required by 47 C.F.R. § 1.727(b), and to include a table of contents and summary, as required by 47 C.F.R. § 1.49. As to the latter, we decline to dismiss the Motion at this stage of the proceeding for such minor noncompliance with the rules. As to the former, we note that Defendants did provide, in compliance with 47 C.F.R. § 1.727(c), a proposed order that incorporates its proposed findings of fact and conclusions of law. We decline to dismiss the Motion simply because these proposed findings of fact and conclusions of law were not also included in a separate document.

[64] MAP does not clearly identify the exact period of time when it received bills for the allegedly unlawful charges.

[65] 47 U.S.C. § 201(b) (requiring common carrier "charges, practices, classifications, and regulations" for and in connection with their communication service to be just and reasonable); 47 U.S.C. § 251(b)(5) (requiring all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications").

[66] 47 C.F.R. § 51.703(b) (providing that a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network").

[67] *TSR Wireless v. US West Communications, Inc.*, 15 FCC Rcd 11166, 11184 at ¶ 31 (2000), *petition for review denied sub nom.*, *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[68] *See, e.g.,* Complaint at 8, ¶ 15; 11, ¶ 21; 18-20, ¶¶ 36-41; 21-24, ¶¶ 45-50 (Counts IV – IX); MAP Mobile Communications, Inc. Reply to Answer, File No. EB-05-MD-013 (filed Sept. 1, 2005) ("MAP Reply") at 20, ¶ 42; MAP Initial Brief at 44, ¶ 44; MAP Reply Brief at 17, ¶ 45. "IntraMTA" traffic is traffic that originates and terminates within the same "Major Trading Area," as defined in 47 C.F.R. § 24.202(a). *See* 47 C.F.R. § 51.701(b)(2).

[69] *See, e.g.,* Answer at 22-24, ¶¶ 46-47; Defendants' Legal Analysis at 8; AT&T Initial Brief at 29-32.

[70] Answer at 24 ¶ 47 (emphasis in original) (quoting *TSR Wireless v. US West*, 11 FCC Rcd at 11176, ¶ 18); *see also* AT&T Initial Brief at 28-29.

[71] AT&T Initial Brief at 29 (quoting *TSR Wireless v. US West*, 11 FCC Rcd at n. 70).

[72] AT&T Initial Brief at 32 (emphasis in original); *see also* Defendants' Legal Analysis at 10-19; AT&T Reply Brief at 25.

network[.]"[73] They argue that, by requiring interconnection only "within" an incumbent LEC's network, section 251(c)(2) specifies that "the point of interconnection between an ILEC network and the network of another carrier must be on the ILEC's network," which they construe to mean a point at the incumbent LEC's "central or tandem offices."[74] SWBT and the Midwest ILECs thus maintain that because the POI was not located in one of their tandem or central offices, the facilities they used to deliver traffic to MAP fall outside their networks.[75]

27. SWBT and the Midwest ILECs attempt to bolster this argument by citing language in the Commission's *Triennial Review Order* indicating that the dedicated transport unbundled network element ("UNE") includes only transmission facilities between incumbent LEC switches and wire centers, and does not include transmission facilities connecting a competing carrier's network to an incumbent LEC's network.[76] According to SWBT and the Midwest ILECs, this language defined the "transmission links" that carriers purchase in order to connect their networks to incumbent LEC networks, *i.e.*, entrance facilities, as falling outside the boundaries of an incumbent LEC's networks.[77] Thus, SWBT and the Midwest ILECs argue that, because the facilities MAP ordered are used to connect its network to their networks, these facilities lie outside SWBT's and the Midwest ILECs' networks, and MAP must provision those facilities itself or purchase them from another source, such as from applicable tariffs.[78]

28. We disagree that SWBT and the Midwest ILECs may bill MAP for all of the interconnection facilities and services at issue in this dispute. Section 51.703(b) of the Commission's rules prohibit LECs from charging CMRS carriers for traffic originated on their networks.[79] Applying that law (and section 332 of the Act)[80] in the context of LEC-CMRS interconnection, the Commission has clearly held that, in the absence of an agreement to the contrary, LECs cannot charge one-way paging carriers for facilities and services used to deliver LEC-originated traffic to the paging carrier's network, where the traffic originates and terminates within the same MTA. Specifically, in *TSR Wireless v. US West*, the Commission ruled, regarding dedicated T-1 circuits connecting an incumbent LEC's offices to a paging carrier's network and provided by the incumbent LEC in the absence of an interconnection agreement, that to the extent that the "T-1 is situated entirely within an MTA, [the incumbent LEC] must provide this facility at its own expense."[81] Here, as in *TSR Wireless*, Defendants have provided

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[73] *See* AT&T Brief at 29-30; AT&T Reply Brief at 31-32; 47 U.S.C. § 251(c)(2).

[74] AT&T Brief at 30-31; AT&T Reply Brief at 31.

[75] MAP's POIs were located at its paging terminal. MAP Reply Brief at 16, ¶ 42.

[76] Defendants' Legal Analysis at 11; AT&T Initial Brief at 24, 30-31; AT&T Reply Brief at 23, 31. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17202-06 at ¶¶ 365-67 (2003) ("*Triennial Review Order*") (*subsequent history omitted*).

[77] Defendants' Legal Analysis at 12-14; AT&T Initial Brief at 29-32; AT&T Reply Brief at 31-32.

[78] Defendants' Legal Analysis at 15; AT&T Initial Brief at 29-32; AT&T Reply Brief at 31-32.

[79] *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16016 at ¶ 1042 (1996) (*"Local Competition Order"*) (subsequent history omitted) (stating that "[a]s of the effective date of [the *Local Competition Order*], a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge"); 47 C.F.R. § 51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.").

[80] 47 U.S.C. § 332.

[81] *TSR Wireless v. US West*, 15 FCC Rcd at 11189, ¶¶ 8, 40. *See id*. at 11184, ¶ 31. *See also Metrocall, Inc. v. Concord Telephone Co.*, Memorandum Opinion and Order, 17 FCC Rcd 2252, 2257 (2002) ("The Commission's rules state that a CMRS provider is not required to pay an interconnecting LEC for traffic that terminates on the CMRS provider's network, if the traffic originated on the LEC's network."); *Texcom, Inc. d/b/a Answer Indiana v.*

(continued …)

interconnection facilities directly connecting their offices to a paging carrier's network in the same MTA. Accordingly, given that they have no interconnection agreement with MAP specifying to the contrary, under *TSR Wireless*, the default prohibition on origination charges applies to the facilities at issue. We note that, most recently, the Commission reaffirmed the *TSR Wireless* holding in *Mountain Communications, Inc. v. Qwest*,[82] which addressed Qwest's imposition of charges for transport facilities interconnecting its switches to the terminal of a paging carrier. The Commission concluded that Qwest violated 51.709(b) of our rules "by improperly charging Mountain for delivering one-way paging traffic that originated and terminated in the same Major Trading Area."[83]

29. We find unavailing Defendants' argument that the alleged interaction of section 51.703(b) of the Commission's rules and section 251(c)(2) of the Act demonstrates that they may charge for originating traffic over interconnection facilities.[84] Defendants' position is undermined by section 51.709(b) of the Commission's rules, which expressly provides that "[t]he rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network."[85] Section 51.709(b) thus specifically prohibits an incumbent LEC from charging for the use of interconnection facilities in connection with incumbent LEC-originated traffic. This prohibition in section 51.709(b) merely "applies the general principle of section 51.703(b) — that a LEC may not impose on a paging carrier any costs the LEC incurs to deliver LEC-originated, intraMTA traffic, . . . to the specific case of dedicated facilities,"[86] and thus it is encompassed by the more general prohibition under section 51.703(b).

30. Moreover, contrary to Defendants' view,[87] the *Triennial Review Order* did not modify the Commission's rules with respect to a LEC's interconnection obligations with one-way paging providers under sections 251(b)(5) and 332 of the Act or sections 20.11 and 51.703(b) of the Commission's rules.[88] Rather, the portion of the *Triennial Review Order* cited by Defendants, which was remanded on appeal,[89] involved unbundling obligations pursuant to interconnection agreements under section 251(c)(3) of the Act, not charges for interconnection.[90] Thus, nothing in the *Triennial Review Order* permits SWBT and

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Bell Atlantic Corp., Memorandum Opinion and Order, 16 FCC Rcd 21493, 21496 at ¶ 8 (2001) (stating that "a LEC may not impose on a paging carrier any costs the LEC incurs to deliver LEC-originated, intraMTA traffic").

[82] *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Memorandum Opinion and Order on Remand, 21 FCC Rcd 11577 (2006).

[83] *Mountain Communications, Inc. v. Qwest,* 21 FCC Rcd at 11580-89, ¶¶ 1, 9.

[84] *See, e.g.,*¶¶ 25-26 and n.69, *supra.*

[85] 47 C.F.R. § 51.709(b).

[86] *TSR Wireless v. US West*, 15 FCC Rcd at 11181-82, ¶ 26.

[87] Defendants' Legal Analysis at 11-16; AT&T Initial Brief at 30-32; AT&T Reply Brief at 22-25.

[88] *Triennial Review Order*, 18 FCC Rcd at 17203-04, ¶ 366.

[89] *See United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554, 586 (D.C. Cir. 2004) (remanding Commission's ruling that excluded entrance facilities from the definition of dedicated transport after finding that the ruling was at odds with the definition of "network element" found in section 153(29) of the Act). *See also In the Matter of Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2612 (2005) (on remand, including entrance facilities in the definition of dedicated transport).

[90] More specifically, the cited portion of the *Triennial Review Order* dealt with defining an incumbent LEC's unbundling requirements for individual network elements under section 251(c)(3) —which entails the negotiation of an agreement pursuant to section 252 of the Act. MAP does not allege, however, that it interconnected with SWBT or the Midwest ILECs pursuant to section 251(c)(3), or ever negotiated an agreement with those Defendants pursuant to section 252 of the Act. *See* ¶ 4, *supra*, and n.97, *infra.*

the Midwest ILECs to bill MAP for all of the interconnection facilities and services at issue in this dispute.

31. Nor is there any basis to conclude that the prohibitions in sections of 51.703(b) and 51.709(b) of our rules do not apply in this case. It is undisputed that the direct interconnection facilities at issue were dedicated to the direct transmission of traffic between MAP and SWBT or the Midwest ILECs, and were located within the MTA where the traffic at issue originated.[91] Further, the parties did not have an interconnection agreement that required the POI to be located in a central or tandem office within SWBT's or the Midwest ILECs' networks. Nor is there any evidence in the record establishing that the facilities were used solely to connect facilities within MAP's CMRS networks by, for example, linking MAP's paging terminal with its antenna.[92] As applied to these facts, the Act and implementing Commission rules and orders prohibit SWBT and the Midwest ILECs from charging MAP for the interconnection facilities and services they provided to MAP, to the extent such facilities and services were used to deliver intraMTA traffic originated on their networks to MAP's point of interconnection. Our analysis here is limited to the facts of this case, which involve direct interconnection, and we do not address the case of indirect interconnection and which parties pay for such facilities under that scenario.

32. We therefore grant, to the extent indicated herein, Counts IV, VI, VII and IX of the Complaint.[93] Because our ruling under section 201(b) of the Act and section 51.703 of the rules will afford MAP all the relief to which it is entitled for the unlawful transport and termination charges, we find it unnecessary to address Counts V and VIII in the Complaint alleging that these charges also violated section 251(b)(5) of the Act, and we dismiss those counts without prejudice.

33. We hasten to add, however, that MAP is obligated to pay the tariffed charges for the facilities and services provided by SWBT and the Midwest ILECs to deliver "transiting traffic" to MAP, *i.e.*, traffic originated by customers of carriers other than SWBT and the Midwest ILECs. We disagree with MAP's contention that it can avoid paying for transiting traffic because SWBT and the Midwest ILECs did not specify a transiting rate or factor in their tariffs.[94] The Commission has repeatedly and clearly held that paging carriers are "required to pay for 'transiting traffic.'"[95] In so ruling, the

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[91] *See* Defendants' Legal Analysis at 11-16; MAP Reply at 20-22, ¶¶ 42-47; AT&T Initial Brief at 29-32; MAP Initial Brief at 14-17, ¶¶ 40, 45-49; AT&T Reply Brief at 31-32; MAP Reply Brief at 15-17, ¶¶ 40-42.

[92] *See, e.g., TSR Wireless v. US West*, 15 FCC Rcd at 11177, n.70.

[93] Complaint at 8-9, ¶¶ 15-18; 11-12, ¶¶ 21-22; 18-20, ¶¶ 36, 38, 39, 41; 21-24, ¶¶ 45-50 (Counts IV, VI, VII, and IX). A violation of Commission rule 51.703 constitutes a violation of section 201(b) of the Act. *See Qwest Corporation v. Federal Communications Commission*, 252 F.3d 462 (D.C. Cir. 2001); *Metrocall v. Concord*, 17 FCC Rcd at 2256-57, ¶¶ 8, 10; *Texcom v. Bell Atlantic*, 16 FCC Rcd at 21496, ¶ 8; *TSR Wireless v. US West*, 15 FCC Rcd at 11176, ¶ 18; 11184, ¶ 40.

[94] MAP Reply at 23, ¶ 49; MAP Reply Brief at 17-18, ¶ 46. By "transiting factor," we and the parties mean a fixed estimate of the percentage of the local facilities used to deliver transiting traffic to MAP. MAP Reply Brief at 17-18, ¶ 46; AT&T Initial Brief at 33; AT&T Reply Brief at 33.

[95] *TSR Wireless v. US West*, 15 FCC Rcd at 11176-77, ¶ 19, n.70 (stating that "Complainants [paging carriers] are required to pay for 'transiting traffic,' that is, traffic that originates from a carrier other than the interconnecting LEC"). *See, e.g., Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 2091, 2095 at ¶ 10 (2002) (stating that "we conclude that Qwest does not violate sections 51.703(b) and 51.709(b) of the Commission's rules by assessing Mountain charges associated with transiting traffic"), *vacated in part and remanded on other grounds, Mountain Communications, Inc. v. FCC*, 355 F.3d 644 (D.C. Cir. 2004); *Metrocall, Inc. v. Southwestern Bell Telephone Company*, Memorandum Opinion and Order on Supplemental Complaint for Damages, 16 FCC Rcd 18123, 18126 at ¶¶ 8-9 (2001) (stating that "we unambiguously permitted LECs to charge paging carriers for transiting traffic"); *Texcom, Inc. v. Bell Atlantic Corp.*, 16 FCC Rcd at 21495, ¶ 5 (stating that "a LEC may charge a paging carrier for traffic that transits the LEC's network and terminates on the paging carrier's network as long as the traffic does not originate on the LEC's network").

Commission has never suggested that this obligation to pay is contingent on proof that the carriers providing the interconnection facilities have provisions in their tariffs specifying either a transiting factor or rate to be applied against traffic carried over the facilities.[96] MAP has not provided any compelling reason to depart from this precedent here.

34. Indeed, we note that, instead of negotiating an interconnection arrangement with SWBT and the Midwest ILECs specifying, *inter alia,* a transiting factor,[97] MAP chose to order interconnection facilities and services from tariffs.[98] The fact that SWBT's and the Midwest ILECs' tariffs did not specify a transiting factor does not negate their right to charge MAP for facilities and services used to deliver transiting traffic. Accordingly, we deny MAP's claims to the extent they allege that SWBT and the Midwest ILECs acted unlawfully by charging MAP for transiting traffic.[99]

C. SWBT and the Midwest ILECs Did Not Violate Section 20.11 of the Commission's Rules By Failing to Pay MAP Reasonable Compensation for Which They Were Never Billed.

35. MAP alleges that SWBT and the Midwest ILECs violated section 20.11 of the Commission's rules[100] by failing to compensate MAP for terminating traffic that originated on their networks.[101] In response, SWBT and the Midwest ILECs argue, *inter alia*, that MAP's claims for reasonable compensation should be denied because MAP never submitted a single bill to SWBT or the

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[96] *See Metrocall, Inc. v. Southwestern Bell Telephone*, 16 FCC Rcd at 18126, ¶ 9 (stating that "[s]ome percentage of the interconnection-related charges imposed by the [defendants] constitutes [transiting] traffic, and they are entitled to charge for it"); *id.* at 18127, ¶ 14 (applying average transiting factors to calculate damages where the incumbent LECs' tariffs did not designate a transiting factor or percentage for transiting traffic).

[97] MAP apparently declined to negotiate such an interconnection arrangement with SWBT and the Midwest ILECs. *See* Defendants' Legal Analysis at 17; Answer Exhibit 5, Declaration of Jack Firth at 2, ¶ 3; 4-5, ¶¶ 10-11. MAP does not deny that it declined to negotiate an interconnection arrangement with SWBT and the Midwest ILECs.

[98] AT&T Initial Brief at 34; AT&T Reply Brief at 25. According to SWBT and the Midwest ILECs, a transiting factor usually is agreed to by the parties or established by state commission in an interconnection agreement, a process MAP declined here. Defendants' Legal Analysis at 16-17; AT&T Initial Brief at 34-35.

[99] *See* Complaint at 8, ¶ 15; 11, ¶ 21; 18-20, ¶¶ 36-41; 21-24, ¶¶ 45-50 (Counts IV – IX). Consequently, to the extent that MAP demonstrates in a supplemental damages proceeding that it actually paid the charges for which SWBT and the Midwest ILECs billed MAP, its recovery of damages must be reduced by an appropriate transiting factor. *See Metrocall, Inc. v. Southwestern Bell*, 16 FCC Rcd at 18126, ¶¶ 8-9. We reject MAP's suggestion that, because SWBT and the Midwest ILECs did not specifically identify transiting charges in their bills to MAP, taking account of such charges in a supplemental damages proceeding would amount to an endorsement of unlawful "backbilling." MAP Reply at 23, ¶ 50. The record demonstrates that SWBT and the Midwest ILECs issued timely bills to MAP for the interconnection facilities and services ordered by MAP in accordance with their published tariffs. AT&T Initial Brief at 34; AT&T Reply Brief at 25. Consequently, requiring that any damages recovery be reduced to reflect transiting traffic would involve no delay in the issuance of bills containing the transiting charges at issue, and thus no "backbilling."

[100] 47 C.F.R. § 20.11(b) (stating that "[l]ocal exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation"). The rule further requires that LECs and CMRS carriers pay reasonable compensation to each other for the termination of traffic that originates on their networks. 47 C.F.R. §§ 20.11(b)(1) and (2).

[101] Complaint at 8, ¶ 15; 12-13, ¶ 23; 26-27, ¶¶ 56-60 (Counts XV and XVI). For purposes of this Order only, we assume, without deciding, that a violation of rule 20.11 would constitute a violation of the Act cognizable under section 208 of the Act. *See North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, DA 09-719, 2009 WL 818927 (Enf. Bur. rel. Mar. 30, 2009) at ¶ 8, n.30. *See generally Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 127 S.Ct. 1513 (2007); *Alexander v. Sandoval*, 532 U.S. 275, 284 (2001).

Midwest ILECs for such charges.[102] As discussed below, we agree with SWBT and the Midwest ILECs.

36. Even assuming that MAP had a right under section 20.11 to impose compensation charges on SWBT and the Midwest ILECs in the absence of any agreement between the parties, MAP cannot complain about their failure to pay such charges, when the undisputed record shows that MAP never issued a single bill for the charges.[103] Contrary to MAP's suggestion, the right to reasonable compensation under rule 20.11 is not entirely self-effectuating.[104]

37. We reject MAP's suggestion that the Commission's decision in *AirTouch Cellular v. Pacific Bell* supports MAP's right to receive reasonable compensation.[105] In *Airtouch Cellular v. Pacific Bell*, the Commission held that Pacific Bell should have paid mutual compensation to a CMRS carrier pursuant to rule 20.11, even though the ILEC's interconnection agreement with the CMRS carrier was silent regarding mutual compensation.[106] The Commission did not indicate that the non-contractual right to compensation recognized in *Airtouch* extends beyond the circumstances presented in that case, where the parties had entered into a one-way compensation agreement that contained no waiver of the right to mutual compensation.[107] Even assuming that section 20.11 provides a broader non-contractual right to compensation, however, the *Airtouch* decision nowhere states that carriers must pay for reasonable compensation in the absence of receiving bills. Similarly, MAP's reliance upon general language in the Commission's *T-Mobile Declaratory Ruling* that rule 20.11 establishes default rights to LEC-CMRS compensation is also unavailing.[108] The *T-Mobile Declaratory Ruling* primarily addressed the issue of

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[102] Answer at 11, ¶ 15; 13, ¶ 23; Defendants' Legal Analysis at 21, 27-28; AT&T Initial Brief at 37, 45-47; AT&T Reply Brief at 35-36. SWBT and the Midwest ILECs also argue that we should deny MAP's claims under section 20.11 of the Commission's rules because (i) MAP failed to negotiate an agreement with them regarding the payment of reasonable compensation, *see* Defendants' Legal Analysis at 21-27; AT&T Initial Brief at 36-41; Defendants' Reply Brief at 35; and (ii) under the "collection action" doctrine, MAP's allegations fail to state a claim under section 208 of the Act. *See* AT&T Initial Brief at 47-50; AT&T Reply Brief at 34-35. Because we rule in Defendants' favor on other grounds, we need not address these two arguments.

[103] Answer at 30, ¶ 60; Defendants' Legal Analysis at 27-28. *See* MAP Reply at 7, ¶ 16.

[104] MAP Reply at 7-8, ¶ 16; MAP Mobile Communications, Inc.'s Objections and Answers to Defendants' Interrogatories, File No. EB-05-MD-013 (filed Sept. 1, 2005) at 3; MAP Initial Brief at 21, ¶ 62; MAP Reply Brief at 19-20, ¶¶ 50-52. We decline to address in this complaint proceeding whether MAP could, in the future, issue bills to SWBT and the Midwest ILECs for the compensation at issue in this case without being subject to a defense that it was unlawfully "backbilling" SWBT and the Midwest ILECs. *See* MAP Reply Brief at 21, ¶ 54, n.81. *See generally American Network, Inc.*, *Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, Memorandum Opinion and Order, 4 FCC Rcd 550, 552 at ¶ 19 (Com. Carr. Bur. 1989), *petition for recon. denied*, 4 FCC Rcd 8797 (1989) (stating that "[a] delay of much less than 24 months between the rendering of service and the receipt of an initial bill for such service may be an unjust and unreasonable practice for purposes of Section 201(b) of the Act"); *People's Network Incorporated v. American Telephone and Telegraph Company*, Memorandum Opinion and Order, 12 FCC Rcd 21081, 21088 at ¶ 15 (Com. Carr. Bur. 1997) (stating that "[w]e have little difficulty in determining that, under the facts of this case, billing delays of 15 or 20 months qualify as an unreasonable practice within the meaning of Section 201(b)").

[105] MAP Reply at 6-7, ¶¶ 13-15 (citing *Airtouch Cellular v. Pacific Bell*, Memorandum Opinion and Order, 16 FCC Rcd 13502 (2001)).

[106] *Airtouch Cellular v. Pacific Bell*, 16 FCC Rcd at 13508, ¶ 16.

[107] *See id. Cf.* 47 C.F.R. § 51.717(b) (providing that a CMRS provider seeking to renegotiate a non-reciprocal compensation arrangement with an incumbent LEC established prior to August 8, 1996 "shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement" until a new reciprocal compensation agreement is established).

[108] *See* MAP Reply at 6-7, ¶¶ 13-15; MAP Initial Brief at 20-21, ¶ 59; MAP Reply Brief at 19-20, ¶ 50 (*citing In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile Petition for Declaratory Ruling*

(continued …)

LECs imposing termination charges on CMRS carriers via state tariffs in the absence of an interconnection arrangement.[109] It says nothing about an obligation to pay such charges in the absence of receiving bills.

38. Consequently, we deny MAP's claims under rule 20.11 (Counts XV and XVI) for compensation not reflected in any bills to SWBT or the Midwest ILECs.

D. The Midwest ILECs Have Not Improperly Billed MAP for Special Access.

39. According to MAP, the Midwest ILECs have violated section 201(b) of the Act by "impos[ing] charges for special access" that "MAP has never requested nor authorized."[110] The Midwest ILECs deny that they billed MAP for special access on the account in question.[111] They maintain that the outstanding balance in dispute is for services to "rearrange certain of the trunks" MAP had previously ordered.[112] As discussed below, we deny MAP's claim because MAP has failed to offer sufficient evidence to meet its burden of proof.[113]

40. The record supports the Midwest ILECs' contention that they never billed MAP for special access on the account at issue.[114] The Midwest ILECs produced copies of MAP's Access Service Requests ("ASRs"),[115] which demonstrate that the underlying services were for rearrangement of certain circuits ordered by a MAP employee via his direct input into the Midwest ILECs' electronic ordering systems.[116] MAP has not offered any specific evidence to refute that its employee ordered such

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Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4857 at ¶ 4 (2005) ("*T-Mobile Declaratory Ruling*")).

[109] *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4855, ¶ 1. The *T-Mobile Declaratory Ruling* amended section 20.11 of the Commission's rules prospectively to make clear the Commission's preference for contractual arrangements for non-access CMRS traffic by permitting incumbent LECs to request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act. Pursuant to the *T-Mobile Declaratory Ruling*, an interim compensation rate takes effect upon receipt of a request for interconnection pursuant to section 252. *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4863, ¶ 5; 4864, ¶¶ 15-16.

[110] Complaint at 12, ¶ 23; 24-25, ¶¶ 51-53 (Count XIII); MAP Reply at 24-26, ¶¶ 53-58.

[111] Answer at 13, ¶ 23; 25-26, ¶¶ 51-53; Answer Exhibit 8, Declaration of Michelle L. Johnson ("Johnson Declaration") at 2, ¶ 5; Defendants' Legal Analysis at 19-20.

[112] Answer at 13, ¶ 23; 26, ¶ 53; Answer Exhibit 8, Johnson Declaration at 2-3, ¶¶ 6-7; Defendants' Legal Analysis at 19.

[113] *See, e.g., High-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 787 (D.C. Cir. 2000) (stating that "[w]ell established FCC precedent imposes the burden of proof on the complainant in section 208 proceedings"); *American Message Centers v FCC*, 50 F.3d 35, 41 (D.C. Cir. 1995) (stating that in a section 208 proceeding "[t]he rules place the burden of pleading and documenting a violation of the Act on [the complainant]. They do not require [the carrier] to prove that it has not violated the Act.").

[114] *See, e.g.,* Answer at 13, ¶ 23; 25-26, ¶¶ 51-53; Defendants' Legal Analysis at 19-20.

[115] An ASR is a document generated by MAP's direct input into the Midwest ILECs' electronic ordering systems. Defendants' Objections and Responses to MAP's Interrogatories, File No. EB-05-MD-013 (filed Sept. 9, 2005) at 3 ("Defendants' Discovery Responses").

[116] Specifically, the Midwest ILECs produced ASRs demonstrating that there were four separate service requests placed by MAP employee Matthew Bocialetti to move circuits in Detroit. *See* Answer, Exhibit 8, Declaration of Michelle L. Johnson at 2-3, ¶¶ 5-9; Defendants' Discovery Responses at 2-3 and n.3; Defendants' Discovery Responses, Exhibits 1 and 2.

services.[117] Rather, it relies upon a single email message from a Midwest ILEC employee that was sent over one year after the services were invoiced, which generally describes the disputed charges as "special access service usage BAN."[118] We find that this single email message is insufficient to overcome the considerable contrary evidence provided by the Midwest ILECs. Consequently, MAP has not met its burden of demonstrating that the Midwest ILECs billed it for special access services that it had not ordered. We therefore deny Count XIII of MAP's Complaint.

E. SWBT's and Midwest ILECs' Invoices Are Not Unclear or Ambiguous.

41. MAP alleges that SWBT and the Midwest ILECs have violated section 201(b) of the Act and section 64.2401(b) of the Commission's rules by issuing confusing and ambiguous invoices to MAP "consist[ing] of codes which do not clearly describe the services" for which MAP has been charged.[119] In support of its claim, MAP identifies one string of codes each from one set of SWBT's and the Midwest ILEC's invoices as examples of the allegedly unclear codes.[120] Although MAP is correct that a violation of section 64.2401(b) of the Commission's rules constitutes an unjust and unreasonable practice under section 201(b),[121] we deny this claim for the reasons below, because MAP fails to present evidence sufficient to sustain its burden of proof.[122]

42. SWBT and the Midwest ILECs have offered proof that the invoices they issued to MAP

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[117] Although MAP's Reply includes a declaration by one of its officers who generally attests that "MAP did not request nor authorize such rearrangement," (MAP Reply, Exhibit 3, Declaration of Grant Sibley), we find that this general, unsubstantiated statement from someone other than Matthew Bocialetti, the MAP employee who ordered the services, does not outweigh the specific documentation produced by the Midwest ILECs that demonstrates otherwise.

[118] Complaint at 24, ¶ 51; Complaint Exhibit 15. MAP did not produce a copy of the actual invoice containing the disputed charges.

[119] Complaint at 10-11, ¶ 20; 13-14, ¶ 25; and 28-29, ¶¶ 61-67 (Counts XVII, XVIII, XIX and XX); MAP Reply at 11-12, ¶¶ 23-24. Section 64.2401(b) of the Commission's rules states that the description of charges on telephone bills "must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged." 47 C.F.R. § 64.2401(b).

[120] Complaint at 10-11, ¶ 20; 13-14, ¶ 25; Complaint, Exhibits 6, 14. MAP does not specify the time period during which it received the invoices with the allegedly confusing codes, and it appears from other exhibits attached to its Complaint that the format of the invoices changed during the parties' relationship to include additional descriptive information. *Compare* Complaint Exhibits 6 and 14 with Complaint Exhibits 18 & 19.

[121] The Commission previously found that a carrier's billing and collection is an integral part of a carrier's provision of communications services subject to the Commission's jurisdiction under Title II of the Communications Act. *See Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Report and Order and Request for Supplemental Comments, 7 FCC Rcd 3528, 3530-3533 (1992), *clarified on reconsideration*, 12 FCC Rcd 1632, 1643-1645 (1997); *Public Service Commission of Maryland*, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4004-4006 (1989), *aff'd, Public Service Commission of Maryland v F.C.C.*, 909 F.2d 1510 (D.C. Cir. 1990); *Detariffing of Billing and Collection Services*, Report and Order, 102 F.C.C. 2nd 1150, 1169-71(1986). Specifically, a carrier's practices regarding "the manner in which charges and providers are identified on the telephone bill [are] essential to consumers' understanding of the services that have been rendered, the charges imposed for those services, and the entities that have provided such services." *In the Matter of Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7503 at ¶ 20 (1999). Consequently, "[a] carrier's provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of section 201(b) of the Act." *Id.* at 7506, ¶ 24. Indeed, the Commission's truth-in-billing requirements for common carriers, including section 64.2401 of the Commission's rules, were established "to define more specifically what would constitute a violation of section 201 with respect to billing practices." *Id.* at 7506-07, ¶¶ 24-25.

[122] *See* n.113, *supra*.

comply with industry billing standards and practices, and contain all of the information necessary to determine the services being billed, the billing period, the specific locations, and the applicable price, including the usage rate where applicable.[123] Specifically, they presented evidence that the invoices were issued via their Carrier Access Billing Systems ("CABS"),[124] and that the format of their CABS invoices, and the codes used on the invoices, conform to industry standards published by the Ordering and Billing Forum of the Alliance for Telecommunications Industry Solutions ("ATIS") and Telcordia.[125] SWBT and the Midwest ILECs specifically demonstrated that the information in the invoices identified by MAP consists of various "Field Identifiers" and "Universal Service Ordering Codes" used throughout the industry.[126] They also provided evidence that the codes contained in the invoices, as well as other pertinent information, are identified and discussed in detail in various documents that they provide online to MAP and all of their access services customers.[127] These documents include, *inter alia*, SWBT's and the Midwest ILECs' Carrier Coding Guides, which provide the method by which a customer who orders services from their access tariffs will technically convey the customer's requirements to SWBT and the Midwest ILECs.[128] SWBT and the Midwest ILECs also presented evidence that they billed for the tariffed services as ordered by MAP, and that the charges specified on their invoices correspond to the

[123] Defendants' Legal Analysis at 29; Answer, Exhibit 6, Declaration of Mark Goodwin ("Answer, Goodwin Declaration") at 1-3, ¶¶ 3, 4, 6; Defendants' Supplemental Response at 3-5.

[124] The Carrier Access Billing System allows carriers in a competitive environment to bill each other for traffic passed between them. *See* Newton's Telecom Dictionary, 22nd Edition (2006) at 189. *See also In the Matter of Joint Application of SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Telephone Communications Services, Inc. for Authorization to Provide In-Region InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin*, Memorandum Opinion and Order, 18 FCC Rcd 21543, 21614 at ¶ 117 (2003) (stating that CABS "generates bills for competitive LECs that purchase UNE and interconnection products"); *In the Matter of Application of Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc. and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region InterLATA Services in Virginia*, Memorandum Opinion and Order, 17 FCC Rcd 21880, 21900 at ¶ 39 (2002) (stating that "Verizon uses CABS to provide billing for interoffice transport facilities, collocation, access services, carrier settlement, and other UNE products"); *In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, Memorandum Opinion and Order, 17 FCC Rcd 17595, 17691 at n.653 (2002) (stating that "CABS is used by BellSouth to bill for most UNE and interconnection services").

[125] Answer, Goodwin Declaration at 2, ¶ 4; Defendants' Supplemental Response at 3-5. ATIS develops and promotes technical and operational standards for communications and related information technologies. *See, e.g., In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4560, 4463 at ¶ 5 (2005). Telcordia, formerly BellCore, is a provider of telecommunications network software and services for Internet protocol, wireline, wireless, and cable. *See, e.g., In the Matter of Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Memorandum Opinion and Order, 18 FCC Rcd 18896, 18897-98 at ¶ 4 and n.13 (2003). According to SWBT and the Midwest ILECs, these standards and guidelines have been used for a number of years without any serious complaints by carrier customers. Answer, Goodwin Declaration at 2-3, ¶ 6.

[126] Defendant Supplemental Response, File No. EB-05-MD-013 (filed Aug. 25, 2005) at 3-5. Defendants also provided a detailed explanation of the codes on one of the invoices that MAP identified, specifying the trunks, locations, type, circuit starting and end points, customer location, and directionality of the circuits. *Id.*

[127] SWBT and the Midwest ILECs provided the links to these websites in their submissions. Defendants' Supplemental Response at 3.

[128] Defendant Supplemental Response, File No. EB-05-MD-013 (filed Aug. 25, 2005) at 3. SWBT and the Midwest ILECs provided evidence that the codes identified in Defendants' Carrier Coding Guidelines are generally based on Telcordia Common Language® codes, which are available online from Telcordia's website.

charges specified in the relevant tariff provisions from which MAP ordered the facilities and services.[129]

43. MAP has not refuted any of the foregoing evidence. Rather, MAP apparently contends that the SWBT and the Midwest ILEC invoices violate section 64.2401(b) of the Commission's rules *solely* because the codes used in the invoices, standing alone, do not provide a sufficient description of the services for which MAP was charged.[130]

44. We find this argument unpersuasive in view of MAP's status as a sophisticated carrier with knowledge of industry standards and practices.[131] For example, the record shows that MAP's employees were familiar with SWBT's and the Midwest ILECs' tariffs and their online ordering systems.[132] In addition, MAP's employees placed orders for various tariffed services and facilities via SWBT's and the Midwest ILECs' online systems, which appear to utilize many of the codes shown on the disputed invoices.[133] SWBT and the Midwest ILECs demonstrated that the codes in question identify the specific facilities or services ordered by MAP, their location(s), the billing period, and their rates, all of which correspond to the online orders placed by MAP.[134] All of this information appears necessary to establish an audit trail by which MAP can verify that the services it placed online with SWBT and the Midwest ILECs were billed in accordance with the rates specified in the tariffs from which MAP placed its orders.

45. Moreover, although the record indicates that MAP disputed certain charges at various times over the course of the parties' approximately nine-year relationship,[135] it contains no evidence that MAP ever told SWBT or the Midwest ILECs during this time that it found the codes on the bills to be

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[129] Answer at 31, ¶ 62; Answer, Goodwin Declaration at 1-3, ¶¶ 3, 5, 6. SWBT and the Midwest ILECs also moved to dismiss MAP's ambiguous billing claims because MAP's Complaint failed to allege any injury with respect to these claims. Defendants' Motion to Dismiss at 13-14. Although MAP bifurcated its liability and damages claims pursuant to section 1.722(d) of the Commission's rules, 47 C.F.R. § 1.722(d), we agree with SWBT and the Midwest ILECs that MAP failed to allege any injury or ask for any relief in its Complaint with respect to its ambiguous billing claims. *See* Complaint at 33-34. In any event, because we deny MAP's ambiguous billing claims on other grounds, SWBT's and the Midwest ILECs' Motion to Dismiss these claims is denied as moot. *See generally Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, Order on Reconsideration, 16 FCC Rcd 5681, 5696 at ¶ 34 (2001) (finding the practice of filing motions to dismiss as separate pleadings is usually unnecessary).

[130] MAP also argues that SWBT and the Midwest ILECs have not identified the specific ATIS and Telcordia standards and practices they followed when issuing their invoices. MAP Reply at 10, ¶ 21. However, contrary to MAP's contention, SWBT and the Midwest ILECs have identified the standards as those published by the Ordering and Billing Forum of ATIS and Telcordia. Defendants' Supplemental Response at 3.

[131] The record reflects that, since at least February 1997, MAP has provided service in the PacBell, Ameritech, and SWBT service territories, including operations in California, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas. *See, e.g.,* Complaint at 8, ¶ 15; 11, ¶ 21; Complaint Exhibit 12 at 1; Complaint, Exhibit 20. The record further reflects that MAP's personnel had access to and were knowledgeable about industry-wide resources, such as online electronic carrier ordering systems and Defendants' tariffs. *See* Defendants' Discovery Responses at 3.

[132] *See* Defendants' Discovery Responses at 3 and Exhibits 1 and 2.

[133] *Id.*

[134] Indeed, MAP's invoices to Defendants include codes similar in format to the codes found on Defendants' invoices to MAP. *See, e.g.,* Defendants' Supplemental Response, Exhibit G.

[135] *See, e.g.,* Complaint Exhibit 13, Letter dated February 13, 1998 from David V. Sherwood, MAP Chief Financial Officer, to John Earle, Ameritech, requesting credit for charges associated with certain interconnection facilities ("Complaint Exhibit 13, MAP Mobile February 13, 1998 Letter").

confusing or ambiguous.[136] In fact, the record concerning MAP's continuing efforts to address and resolve its interconnection-related billing disputes with SWBT and the Midwest ILECs suggests that MAP understood the codes on the invoices which enabled it to identify specific charges it was disputing.[137]

46. Based on this record, we find that MAP has failed to meet its burden of proving that SWBT's and the Midwest ILECs' invoices were unclear, confusing, or ambiguous in violation of section 201(b) of the Act or section 64.2401(b) of the Commission's rules. Accordingly, we deny Counts XVII, XVIII, XIX, and XX of the Complaint.[138]

F. MAP Does Not Have A Cause of Action Under Section 415 of the Act.

47. MAP alleges that Defendants violated section 415(a) of the Act[139] by invoicing MAP for services provided more than two years prior to the filing of MAP's Complaint.[140] We reject MAP's contention. As SWBT and the Midwest ILECs point out, section 415(a) is a defense to claims asserted against a party; it does not provide the basis for an affirmative claim for relief.[141] Section 415 serves as a procedural and substantive bar to the consideration of complaints against common carriers,[142] thereby "protect[ing] a potential defendant against stale and vexatious claims."[143] Section 415(a) establishes a time limit within which a carrier may initiate legal action to recover charges owed; it "does not address what is an acceptable amount of time between a carrier's provision of service and the rendering of its bill."[144] MAP's section 415 claims are thus not supported by either the statutory language or the purpose of the statutory provision. We therefore deny Counts XXII and XXIII of MAP's Complaint.[145]

IV. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that SBC Communications, Inc., Ameritech Corporation, Pacific Bell Communications, and Southwestern Bell Telephone Co. are hereby

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[136] In addition, MAP's responses to Defendants' discovery on this very claim did not provide any specific supporting information. *See* MAP Mobile Communications, Inc.'s Response to Defendants' Interrogatories, File No. EB-05-MD-013 at 3 (filed Oct. 19, 2005).

[137] *See, e.g.*, Complaint at 8-9, ¶¶ 15-18 and 11-12, ¶¶ 21-22; Complaint Exhibit 13, MAP Mobile February 13, 1998 Letter.

[138] *See* Complaint at 28-29, ¶¶ 61-65 (Counts XVII, XVIII, XIX, and XX).

[139] Section 415(a) states that "[a]ll actions at law by carriers for the recovery of their lawful charges … shall be begun within two years from the time the cause of action accrues, and not after." 47 U.S.C. § 415(a).

[140] Complaint at 30-32, ¶¶ 69-70, 72 (Counts XXII and XXIII); 10, ¶ 19; 13, ¶ 24; 16, ¶ 29.

[141] Answer at 33-35, ¶¶ 69-72; Defendants' Legal Analysis at 30-31.

[142] *See, e.g., MCI Telecommunications Corp. v. Pacific Bell Telephone Co.*, Memorandum Opinion and Order, 12 FCC Rcd 13243, 13252 at ¶ 15 (Com. Carr. Bur. 1997).

[143] *Bunker Ramo Corp. v. The Western Union Telegraph Co., New York, N.T.*, Memorandum Opinion and Order, 31 FCC 2d 449, 453-54 (Rev. Bd. 1971). *See, e.g., Business Choice Network v AT&T*, Memorandum Opinion and Order, 7 FCC Rcd 7702, 7703 at n.7 (Com. Carr. Bur. 1992) ("That section limits the time when carriers may begin "actions at law," *i.e.*, sue in an appropriate court, to recover their lawful charges.").

[144] *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, Order on Reconsideration, 4 FCC Rcd 8797, 8798 at ¶ 10 (1989).

[145] *See* Complaint at 30-32, ¶¶ 69-72 (Counts XXII and XXIII).

DISMISSED as parties, without prejudice.

49. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., Pacific Bell Telephone Company, and Southwestern Bell Telephone, L.P. are hereby added as parties in this proceeding.

50. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, 251, 252, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, 251, 252, and 332, and sections 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that Defendants' Motion to Dismiss is GRANTED IN PART AND DENIED IN PART to the extent set forth herein, and those portions of the Complaint asserting claims against Pacific Bell Telephone Company, including specifically Counts X, XI, XII, and XXIV, are DISMISSED without prejudice.

51. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, 251, 252, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, 251, 252, and 332, and sections 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that Counts I, II, III, V, VIII, XIV, XVIII (§ 64.2401(d)) and XXI of the Complaint alleged by MAP Mobile Communications, Inc. against Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., Pacific Bell Telephone Company, and Southwestern Bell Telephone, L.P. are DISMISSED without prejudice.

52. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, 251, 252, and 332, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, 251, 252, and 332, and sections 1.720-1.736, 20.11, 51.703(b), and 64.2401 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, 20.11, 51.703 and 64.2401, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that Counts IV, VI, VII, and IX of the Complaint alleged by MAP Mobile Communications, Inc. against Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Telephone, L.P. are GRANTED IN PART AND DENIED IN PART, to the extent indicated herein.

53. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, 251, 252, and 332, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, 251, 252, and 332, and sections 1.720-1.736, 20.11, 51.703(b), and 64.2401 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, 20.11, 51.703 and 64.2401, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that Counts XIII, XV, XVI, XVII, XVIII (§ 64.2401(b)), XIX, XX, XXII, and XXIII of the Complaint alleged by MAP Mobile Communications, Inc. against Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Telephone, L.P. are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau